

LAW AND PUBLIC SAFETY

DIVISION OF GAMING ENFORCEMENT

CASINO HOTEL ALCOHOLIC BEVERAGE CONTROL

Proposed New Rule: N.J.A.C. 13:69I-2.6

Proposed Amendments: N.J.A.C. 13:69I-1.4A; -2.2; -2.4; -5.3

Authorized By: David Rebuck, Director, Division of Gaming Enforcement.

Authority: N.J.S.A. 5:12-69a; -70a; -103

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-

Submit written comments by , to:

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Division of Gaming Enforcement

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Or electronically at: rulecomments@njdge.org

The agency proposal follows:

Summary

The Division of Gaming Enforcement (Division) is proposing a new rule, N.J.A.C. 13:69I-2.6, which sets forth a standardized process for the transfer of alcoholic beverage inventory to a sister casino property. This rulemaking is the result of petitions filed at the closure of operating casinos requesting the transfer of alcoholic beverage inventory. The new rule authorizes the transfer of inventory in original sealed containers at actual cost, the transfer between operating properties to deal with a shortage at actual cost or in exchange for later replacement of the same beverage in sealed containers, and the transfer between unaffiliated establishments operating within the same casino. Proposed new N.J.A.C. 13:69I-2.6(b) sets forth the record keeping requirements for such transfers, namely a recording of the size, brand, date, parties and proposed payment.

The Division is proposing amendments to N.J.A.C. 13:69I-1.4A to permit the operation of a craft distillery which has been licensed by the New Jersey Division of Alcoholic Beverage Control to operate on a casino's premises if it obtains a vendor registration from the Division. Proposed amendments to N.J.A.C. 13:69I-2.2 will simplify the process for permitting certain casino employees to consume alcoholic beverages for job-related reasons during employment hours, but specifically prohibits consumption by employees of the games, surveillance and security departments. Previously, all casino employees were barred from

consuming alcoholic beverages during working hours. The amendments provide for an annual list of persons such as casino hosts or casino executives who may need to entertain a client or potential client during working hours. The annual list will be deemed approved unless the Division specifically interposes an objection within five days of receiving the list. Regardless of the department they are in, no one who is or appears intoxicated may be permitted to work. The amendment also authorizes certain sales of product combinations and promotional packages, so long as the combined price does not exceed the price of the individual components. The amendment permits the Director of the Division to authorize special events at which an unlimited alcoholic beverage package may be offered for sale. Such packages were previously available only for New Year's Eve. Proposed amendments to N.J.A.C. 13:69I-2.4 will lower the threshold for joint event sponsorships to events with 500 people attending. The previous requirement was 1000 persons.

The Division is proposing amendments to N.J.A.C. 13:69I-5.3 to simplify the application process for a consumer alcoholic beverage tasting permit. Tastings cannot be served to an intoxicated person. Samples offered to induce the sale of alcoholic beverages would be limited to premises authorized to dispense alcoholic beverages and to persons otherwise authorized to consume them.

This notice of proposal is not required to be referenced in a rulemaking calendar since a public comment period of 60 days is being provided. See N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rule and amendments address the service of alcoholic beverages at casino properties and independent properties located within a casino. The changes are intended to reduce paperwork and simplify procedures while ensuring regulatory control over the sale, distribution and consumption of alcoholic beverages within properties owned, controlled by, or located at casinos. One change may assist in the generation of business by allowing certain employees such as casino hosts to consume alcoholic beverages during working hours. This will broaden social opportunities and may lead to additional business. Employees in the Games, Security and Surveillance Departments would still be prohibited from consuming alcohol during working hours. An additional change would allow the sale of combination packages, whereby alcohol is included in a food or hotel room purchase. Previously, such combination sales were permitted only on New Year's Eve. This proposal allows sales on other days with the approval of the Division. This could lead to greater marketing opportunities for casinos. This proposal would also encourage the operation of a craft distillery within a casino

facility if it obtains a craft distillery license from the Division of Alcoholic Beverage Control. Such a change could have a positive social impact.

Economic Impact

The proposed new rule and amendments are not anticipated to have any significant economic impact on the casino industry or the cost of regulation. The proposed new rules and amendments may reduce certain regulatory costs for CHAB licensees by standardizing the process for transferring liquor inventory between properties and by lowering the threshold for a proposed jointly sponsored event from 1000 persons to 500 persons.

In addition, the ability to have craft distilleries, to offer combination packages on days other than New Year's Eve, and the opportunity for casino employees in most departments to socialize with business contacts by allowing such employees to consume alcoholic beverages during working hours present the opportunity for increases in business which could result in higher tax revenues for the State. No fee increases are associated with this proposal.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rule and amendments are authorized by the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., and are not subject to Federal law.

Jobs Impact

The proposed new rule and amendment will not have any impact on the number of jobs in the state of New Jersey.

Agriculture Industry Impact

The proposed new rule and amendments will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

The proposed new rule and amendments will authorize a restricted distillery licensee who obtains a vendor registration to operate within a casino facility. This may allow new small business to open in a casino location. Such businesses will need to seek a vendor registration, which is already issued to other small businesses. No additional regulatory burden is imposed. The other changes are intended to reduce paperwork by simplifying the process for seeking a tasting permit for beer or wine tastings and to otherwise allow greater marketing flexibility to CHAB licensees. Thus small business that are CHAB licensees could see a reduction in costs, but will not see any type of increased regulatory burden as a result of these additions and amendments.

Housing Affordability Impact Analysis

The proposed new rule and amendment will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the

proposed amendment would evoke a change in the average costs associated with housing because the rule concerns the conduct of gambling at New Jersey casinos.

Smart Growth Development Impact Analysis

The proposed new rule and amendment will not have an impact on smart growth and there is an extreme unlikelihood that the proposed amendment would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment plan in New Jersey because the proposed amendment concerns the conduct of gambling at New Jersey casinos.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

N.J.A.C. 13:69I CASINO HOTEL ALCOHOLIC BEVERAGE CONTROL

13:69I-1.4A Restricted brewery authorization; **Craft Distillery authorization**

(a) – (b) (No change.)

(c) **A vendor registrant with a craft distillery license issued by the New Jersey Division of Alcoholic Beverage Control pursuant to N.J.A.C.**

33:1-10 may operate a craft distillery within a casino hotel.

13:69I-2.2 Additional operating conditions of CHAB licensees

(a) No employees or agents of a CHAB licensee shall consume alcoholic beverages during their hours of employment or agency **at the casino or on or about a CHAB licensed premises, including on the casino floor** [by a CHAB licensee, including overtime].

(b) Notwithstanding (a) above, the Division may, upon [petition] **request** by a CHAB licensee, grant approval for certain persons to consume alcoholic beverages during their hours of employment[,] **for job-related reasons** provided that:

1. Such [petition] **request** specifies the position of all employees for whom approval is requested and the reason for the requested relief;
2. The CHAB licensee maintains on the licensed premises a complete list of all persons for whom approval is granted and the date of approval; [and]
3. The CHAB licensee submits a copy of the list maintained pursuant to (b)2 above to the Division's principal office located in Atlantic City, by 5:00 P.M. on [June 30 and] December 31 of each calendar year[.]; **and**

4. **The persons for whom such relief is requested are not employed in the casino games, surveillance or security departments.**

Such request shall be deemed to be approved unless an objection is made by the Division not later than five days after its receipt of the annual list. Notwithstanding the above, no CHAB licensee shall allow or permit any actually or apparently intoxicated person to work in any capacity in, on or about its CHAB licensed premises, including on the casino floor.

(c) (No change.)

(d) Combination sales of any kind, consisting of more than one article, whether it be an alcoholic beverage or something else, at a single aggregate price are prohibited, except for:

1. A combination sale consisting of [no more than three] alcoholic beverages, **as long as the alcoholic beverages included as part of the combination sale are not sold below cost**, and:
admission to a show; a meal; the use of a table, cabana, amenity or similar facility where a use, rental or admission fee is charged; a promotion package including, but not limited to, **a room special, meal**, a weekend, honeymoon, or other similar specialty promotional package for hotel or day guests; provided

that the alcoholic beverages shall not be advertised as “free”, but may be advertised as “included” or “complimentary” and complimentary non-alcoholic beverages are available and offered as an alternative to the complimentary alcoholic beverages;

2. A combination sale which includes a complimentary bottle of **distilled spirits**, champagne, or wine in its original container (not exceeding [187 ml. for one person or]750 ml. [for two persons]) as part of a **room special, meal**, weekend, honeymoon, or other specialty promotional package for hotel guests[; or
3. A combination sale which is part of a New Year's Eve promotional package].

(e) No CHAB licensee shall, directly or indirectly, allow, permit or suffer any practice or promotion that:

1. Offers to the public at large unlimited availability of any alcoholic beverage for a set price, except on New Year's Eve **or as part of a special event authorized in the sole discretion of the Division Director contingent upon conditions to be imposed by the Director;**

- (a) Any special event authorization approval pursuant to (e)1 above will require a filing by the licensee at least thirty (30) days prior to the event which includes:**
- i. Certifications signed by the licensee's General Counsel, and the General Manager or Director of Food and Beverage;**
 - ii. a security plan; and**
 - iii. such other information as may be required by the Division.**

2. - .3 (No change.)

(f) No CHAB licensee shall sell or offer to sell alcoholic beverages at a price below "cost," as defined by the Division of Alcoholic Beverage Control, except that CHAB licensees may serve complimentary alcoholic beverages as follows:

1. - 4. (No change.)

5. A CHAB licensee holding a restricted brewery **or distillery** authorization may offer, without charge, samples of no more than five ounces of any malt alcoholic beverage brewed on the premises **or one half ounce of any alcoholic beverage distilled on the premises**, limited to one sample per customer per day of each such beverage.

(g) – (j) (No change.)

13:69I-2.4 Joint event sponsorships

(a) (No change.)

(b) An alcoholic beverage manufacturer, wholesaler or other person licensed to sell alcoholic beverages to retailers, or third parties acting at their direction, may jointly sponsor an event with a CHAB licensee, if:

1. (No change.)
2. The event, or series of events, is estimated in good faith by the CHAB licensee to have an audience attendance of at least [one thousand] **five hundred** patrons.

(c) - (g) (No change.)

13:69I-2.6 Transfer of Alcoholic Beverages Between Commonly Owned CHAB Licensees; Transfer of Alcoholic Beverages Between CHAB Licensees Within Same Casino Hotel

(a) CHAB licensees with common ownership or management may (1) purchase from and sell to each other alcoholic beverages in their original sealed containers, at actual invoice cost, or (2) receive and return (i.e., barter) to each other the identical brand and volume of alcoholic beverages in their original sealed containers, without cost.

CHAB licensees without common ownership or management, but operating within the same casino hotel facility, may receive and return the identical brand and volume of alcoholic beverages in their original sealed containers, without cost.

(b) Each CHAB licensee engaging in the transaction described in (a) shall maintain a record of each transaction, to be retained for at least five years in accordance with N.J.A.C. 13:69D-1.8(g)2ii. The record shall show, for each transaction:

- 1. the brand and type of alcoholic beverage;**
- 2. the number of bottles and cases;**
- 3. the size of each bottle;**
- 4. the date of the transaction;**
- 5. the parties to the transaction;**
- 6. the nature of the transaction (e.g. purchase and sale, barter);**
- 7. the actual invoiced wholesale cost of the alcoholic beverages.**

Said log shall be made available to the Division immediately upon demand.

(a) A CHAB licensee may conduct an alcoholic beverage tasting or tasting dinner on its premises provided that [it holds a consumer alcoholic beverage tasting permit issued by the Division and provided further that]:

(1. – 2.) (No change.)

3. Service of alcoholic beverages is limited to the following amounts per person:

i. (No change.)

ii. No more than four ounces of any one malt alcoholic beverage, or one and one-half ounces of any one naturally fermented wine or sparkling wine at a tasting; and

iii. No more than one-half ounce of any one fortified wine or distilled spirit at a tasting or tasting dinner[; and].

4. Notwithstanding the requirements of paragraph 3 above, the CHAB licensee must fully comply with all statutory and regulatory requirements attendant to the service of alcoholic beverages.

5. No later than five days in advance of the scheduled event, the CHAB licensee provides the Division with a copy of [each menu, program, or other written description of the tasting or tasting dinner

event] **a fully completed and executed Consumer Alcoholic Beverage Tasting Permit Application form in accordance with N.J.A.C. 13:69A-5.18 filed with the Division along with the applicable fee.**

(b) A CHAB licensee may offer a sample of an alcoholic beverage, not to exceed two ounces, to a consumer for the purpose of inducing or promoting a sale, provided:

- i. samples shall be offered in accordance with all statutory and regulatory requirements attendant to the service of alcoholic beverages;**
- ii. samplings shall not be conducted when the sale of alcoholic beverages is otherwise prohibited;**
- iii. sampling shall be confined to the licensed premises.**

(c) Any supplier, manufacturer or wholesaler which holds an annual special permit for consumer tasting events issued by the Division of Alcoholic Beverage Control may hold a tasting or tasting dinner on the premises of a CHAB licensee provided that a copy of the permit is filed with the Division no later than one day prior to the event.

David Rebeck
Director